

DOCKET NO.: HENK-0129 (H-5328)
Application No.: 10/771,648
Office Action Dated: September 2, 2005

PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116

REMARKS

This submission is in response to the Final Office Action of September 2, 2005. A petition to revive is filed herewith, along with a Request for Continued Examination. The entire delay in filing the required reply from the due date for the reply until the filing of the petition herewith was unintentional. No amendments are being made in this response, the claims are presented merely for the Examiner's convenience.

The Final Office action erroneously listed claims 1-17 and 20 as pending, though acknowledging the response of June 28, 2005. The response of June 28, 2005, *canceled* Claims 14-19, and *added* new independent Claims 21 and 22, along with new dependent Claims 23-26. Thus, upon entry of the response, claims 1-13 and 20-26 were pending.

Rejection of claims 14-17 was improper because only claims 1-13 and 20-26 are pending.

Failure to even address Claims 21-26 was also improper. Was the Examiner implying that Claims 21-26 fell outside the restriction? Or were they rejected? The Examiner is reminded that when a claim is refused for any reason relating to the merits the ground of rejection must be fully and clearly stated. MPEP §707.07(d). Or are Claims 21-26 allowed? The status of the claims should not be left to the Applicant's conjecture.

Regarding claims 1-10, 13, and 20, Applicant assumes that the rejection under 103(a) based on the Engelaere reference over the Varadarajan reference is intended. The Examiner admits that the Engelaere reference does not teach or suggest a double bead. Applicant amended Claim 1 to recite "wherein **the beads are spaced 0.5 mm to 18 mm apart.**" The Examiner's reasoning that it would be obvious to modify the single 5mm bead of the Engelaere reference to meet the limitation in light of the Varadarajan reference appears to

lack support. The Varadarajan reference fails to teach how far apart the beads are spaced - it focuses on the different bead sizes relative to each other. Looking at Fig. 2 of the Varadarajan reference, there appears to be a number of spacing choices. Applicant is concerned that the selected one was guided by impermissible hindsight. For example, why are certain teachings ignored? For example, if outer bead 38 were imagined to be 5mm based on the Engelaere reference disclosure, the distance that the beads 36 and 38 are spaced apart would be well outside the recited range. Yet this teaching counter to the Examiner's position is not given weight apparently.

Moreover, Applicant remains puzzled as to how the Varadarajan reference, which is limited to one-time breaking of the seal with lid 11, can be relied upon so heavily by the Examiner in rejecting a resealable container.

In short, no *prima facie* case of obviousness has been established and the rejection is improper. Applicants respectfully request reconsideration.

Furthermore, not all limitations of the dependent claims have had the requisite analysis. For example, Claim 6 recites that "the multilayer film comprises at least: a) an outer layer; and b) two sealing layers, the sealing layers being separated by an adhesive layer which occupies 70 to 99 % of the surface area of a sealing layer." The Office action has failed to determine whether the limitations are disclosed by the references, or if the references can be modified to arrive at the limitations, and even if so, to identify the *motivation* to modify the references. This *prima facie* burden has not been satisfied.

In another example, Claim 7 states that "wherein the multilayer film is sealed against the rim in such a way that 65 to 85% of the sealable periphery of the rim has a double bead and 35 to 15% of the sealable periphery of the rim is permanently sealed." It is improper to

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reject a claim without fully and clearly stating why. The Examiner must point out how the references combine to teach a portion of the rim being permanently sealed, as well as the percentages involved.

As for separately rejected Claims 11 and 12, no *prima facie* case of obviousness has been established for either claim, in view of the foregoing reasons regarding the deficiencies of the Engelaere and Varadarajan references.

If the Examiner has any questions, the Examiner is invited to call the undersigned.

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